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FISCAL IMPACT STATEMENT

LS 7621
BILL NUMBER: HB 1929

NOTE PREPARED: Jan 8, 2003
BILL AMENDED:

SUBJECT: Hoosier Homefield Advantage Investment Tax Credit.

FIRST AUTHOR: Rep. Yount
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: <u>**X**</u> **GENERAL**
<u>**X**</u> **DEDICATED**
FEDERAL

IMPACT: State

<u>Summary of Legislation:</u> The bill establishes the Hoosier Homefield Advantage Investment Tax Credit for businesses that have operations in Indiana that make a qualified investment to foster jobs and higher wages at a location in Indiana.

<u>Effective Date:</u> July 1, 2003.

<u>Explanation of State Expenditures:</u> *Department of Commerce:* The tax credit established by the bill would create additional administrative demands on the Indiana Department of Commerce (IDOC). Under the bill, the Economic Development for a Growing Economy (EDGE) Board is responsible for administering the investment tax credit, and the IDOC is required to provide administrative support to the EDGE Board in administering the tax credit. Specifically, the bill requires the Director of the IDOC to: (1) prescribe a form to be used by a taxpayer to apply for the investment tax credit; (2) verify that the taxpayer is complying with certain performance conditions in the tax credit agreement between the taxpayer and the EDGE Board; (3) provide taxpayers the opportunity to explain any noncompliance with the performance conditions and notify the Department of State Revenue when an assessment for noncompliance is necessary; and (4) annually submit a report on the investment tax credit program to the EDGE Board. The bill also requires the EDGE Board to provide for a biennial evaluation of the investment tax credit program to be submitted to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The Board is required to give first priority to using the Indiana Economic Development Council for the evaluation.

The IDOC should be able to meet these demands given its current budget and resources and given that it currently provides support to the EDGE Board in administering the EDGE Tax Credit Program. The December 7, 2002, state staffing table indicates that the IDOC has 52 vacant full-time positions, including regional office positions.

Department of State Revenue: The Department of State Revenue (DOR) would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate this tax credit. These expenses presumably could be absorbed given the DOR's existing budget and resources. Under the bill, the DOR also is responsible for imposing and collecting assessments against taxpayers who have been awarded investment tax credits but do not comply with the performance conditions in the tax credit agreement with the EDGE Board.

State Budget Agency: The tax credit also would create additional responsibilities for the State Budget Agency (SBA). The bill requires the SBA to certify that investment tax credits awarded by the EDGE Board under this bill will provide an overall positive fiscal impact to the state. Currently, the SBA performs this function with respect to Economic Development for a Growing Economy Credits awarded annually by the EDGE Board. As a result, the administrative impact of this provision on the SBA is not expected to be significant.

Explanation of State Revenues: The bill establishes the Hoosier Homefield Advantage Investment Tax Credit to be awarded by the EDGE Board. This new tax credit could potentially reduce revenue from the Adjusted Gross Income (AGI) Tax, the Insurance Premiums Tax, and the Financial Institutions Tax by an indeterminable amount. The bill is effective July 1, 2003. Thus, depending upon how quickly the EDGE Board begins the tax credit determination process, the bill could potentially impact state revenue beginning in FY 2004, but more likely in FY 2005.

Under the bill, the EDGE Board is authorized to award a taxpayer (an individual, corporation, partnership, or other entity with a tax liability) a nonrefundable tax credit for expenditures on qualified investment that the Board determines will foster job creation and higher wages in Indiana. The investment tax credit is equal to 30% of the taxpayer's qualified investment. The credit amount can be used in the taxable year in which the investment is made and the nine taxable years that follow. The credit amount that the taxpayer may claim in the taxable year in which the investment is made is equal to the lesser of: (1) 30% of the qualified investment or (2) the taxpayer's *state tax liability growth*. The state tax liability growth is the difference between the taxpayer's state tax liability in a taxable year minus the greater of: (1) the taxpayer's state tax liability in the most recent prior taxable year in which part of a credit was claimed or (2) the taxpayer's tax liability in the taxable year immediately preceding the taxable year in which the investment was made. The taxpayer may carry forward any remaining credit amount for the next nine taxable years. In each of these taxable years, the credit amount claimed may not exceed the difference between the taxpayer's tax liability in that taxable year and the taxable year in which the qualified investment was made. The tax credit is limited to the amount of qualified investment that is directly related to expanding the workforce in Indiana; and the tax credit may not be awarded in relation to jobs that a taxpayer is relocating from one Indiana site to another.

A taxpayer may claim the credit against a taxpayer's Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, or Financial Institutions Tax liability. If a pass through entity does not have a tax liability, the credit may be claimed by shareholders or partners in proportion to their distributive income from the pass through entity. (A pass through entity is a S-Corporation, partnership, trust, limited liability company, or limited liability partnership.)

Revenue from the AGI Tax on corporations, the Insurance Premiums Tax, and the Financial Institutions Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of this revenue is deposited in the Property Tax Replacement

Fund. Since the bill is effective July 1, 2003, it may be possible for the EDGE Board to award tax credits for tax year 2003. However, this would depend, to a large extent, upon how quickly the EDGE Board is able to begin the tax credit determination process. On this point, EDGE tax credits were awarded for tax year 1994, though the legislation establishing the EDGE Program was approved, and went into effect, in February 1994.

Qualified Investment: Under the bill, qualified investments include: (1) purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment; (2) purchase of new computers and related equipment; (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities; (4) onsite infrastructure improvements; (5) construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities; (6) costs associated with retooling existing machinery and equipment; and (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry. However, a qualified investment does not include investment in property that can be readily moved outside Indiana. In addition, the amount of a taxpayer's expenditures on qualified investments which are eligible for the investment tax credit must be determined and certified by the EDGE Board.

Tax Credit Process: Under the bill, taxpayers seeking the investment tax credit apply to the EDGE Board before making a qualified investment. The bill permits the EDGE Board to enter into a tax credit agreement with the applicant if the Board determines that: (1) the applicant has conducted business in Indiana for at least one year; (2) the applicant's project will raise total earnings of the applicant's Indiana employees; (3) the applicant's project is economically sound and will benefit the people of Indiana; (4) receiving the tax credit is a major factor in moving forward with the project, and not receiving the credit will result in the applicant not raising the total earnings of Indiana employees; (5) awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the State Budget Agency; (6) that jobs for which the credit is being awarded are <u>not</u> being relocated from one Indiana site to another; and (7) the average wage paid by the taxpayer to its employees (excluding "highly compensated employees") at the project location after the credit is given will be at least 150% of the state minimum wage. The bill references the federal Internal Revenue Code definition of "highly compensated employee." Such an employee is: (1) any employee who was a 5% owner at any time during the year or the preceding year; or (2) an employee who had compensation for the preceding year in excess of $90,000 for 2002 and, if the employer elects, was among the top 20% of employees by compensation for the preceding year. The dollar amount is inflation adjusted each year by the U.S. Secretary of the Treasury.

The bill requires that the EDGE Board certify the amount of qualified investment that is eligible for the tax credit. The tax credit may be provided only for the amount of such investment that is directly related to expanding the workforce in Indiana. If the EDGE Board chooses to award a tax credit, it must enter into a tax credit agreement with the applicant. The agreement stipulates the first year in which the taxpayer may claim the tax credit, the maximum annual credit amount to be allowed the taxpayer, and various performance conditions that the taxpayer must meet in order to continue to receive the tax credit. The bill specifies several performance standards relating to business operations, new employees, and wage levels at the project location. The bill also permits the EDGE Board to include any additional performance conditions. If the taxpayer is, at any time, found not to be complying with the performance conditions, an assessment may be imposed against the taxpayer. The assessment may not exceed the total investment tax credits the taxpayer has received to that point.

<u>Explanation of Local Expenditures:</u>

Explanation of Local Revenues:

State Agencies Affected: Department of Commerce, Department of State Revenue, State Budget Agency, EDGE Board, Indiana Economic Development Council.

Local Agencies Affected:

Information Sources: *2003 U.S. Master Tax Guide*, paragraph 2111.

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